



CITY OF DANBURY  
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Danbury, CT 06810

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DANBURY, CONN.

*Kevin A. Gallo*

*Environmental Impact Commission*

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**DRAFT MINUTES**

City Council Chambers  
**September 12, 2012**

**7:00 pm**

Present were Chairman Bernard Gallo, William Mills, Michael Esposito, Alt. Derek B. Roy, Matthew Rose.

Absent were Craig D. Westney, Bruce Lees, Alt. Josh Reilly.

Staff present were Daniel Barood, RS, MPH, Patricia Lee, Secretary.

Chairman Gallo called the meeting to order at 7:03 pm.

The Pledge of Allegiance was led by Esposito at Chairman Gallo's request.

**PUBLIC HEARING:** NA

**SHOW CAUSE HEARING FOR CEASE & DESIST ORDERS:**

The commissioners voted to move this to the end of the agenda with Mills opposed. Bernadine A. Henry, 39 North Nabby Road (L06004), Cease & Desist Order sent 7/9/12, filling conducted without EIC permit, to appear with restoration plan and EIC application at tonight's meeting for discussion. Neighbor's opposition letter received 9/10/12. Gallo introduced this Cease & Desist order, and Ralph J. Gallagher, Jr. came forward saying we are waiting for Counsel, Neil R. Marcus, who's not here yet. Gallo said to Mike Henry we need to see proof on paper that he represents Bernadine A. Henry here. Gallagher asked can we move this later on the agenda? Barood said, point of order, through the Chair, I think we should at least hear the attorney. Neil Marcus is on his way, Gallagher said. Esposito made a motion to move this to the end of agenda. Rose seconded the motion. Mills was opposed. Motion carried with Mills opposed. Gallo said did they tell you the point I brought up earlier? Neil Marcus took the mic at 7:15 pm, identified himself, saying I have been engaged by Mrs. Henry and Michael Henry and Ralph Gallagher, their engineer, to address and to respond to the Cease & Desist. The copy that I have of the Cease & Desist indicates three things. One is Mrs. Henry was ordered to Cease & Desist activity which I believe she did. Then she was ordered to correct the condition by submitting an environmental restoration plan, and to that extent, the grading plan, Ralph Gallagher added; the grading permit that was filed, and accompanied by an application for a Regulated Activity, but we believe that the work is not regulated because it's exempt. And then we are going to discuss it at the meeting this evening, Marcus added. So, I'd like to tell you what my preliminary research has shown, that

basically this falls under Sec. 22a-40 of the Connecticut General Statutes which permits farming operations. Gallo said we have it here. Gallo asked, Dan, the application; who signed the application? Who signed the grading permit? Baroody replied Michael Henry. He's not the owner of the property. Marcus said Michael Henry. He can't be the applicant, Gallo said. The applicant has to show ownership or permission to apply for this. Gallagher identified himself. Ralph Gallagher said the plan was represented to me that Henry Farm, LLC, and Michael Henry being managing partner of the property. Marcus said that's my understanding. My understanding, Marcus continued, was that the title to the property is in Bernadine Henry, but she actually leases it to a corporate limited liability company, and that Michael is the managing member of the LLC. And Ralph (Gallagher), of course, has been hired and I've been hired. Gallo said I understand all of that. Gallo asked to see a letter authorizing all that. Marcus said we'll get you a letter from her authorizing all this; that's not a problem. Gallagher identified himself again, saying the grading permit that I filled out for Mr. Baroody, says that the owner is Bernadine Henry and that the, what it says, the name and address and phone number of the person/ business to whom the bond should be released when the final approval is granted, bond release, I put Michael Henry, the managing owner. Gallo said but that doesn't show that her had permission to do this. Gallagher said, I see. Gallo said that grading permit is not before us. Marcus said that is all related. Gallo said I understand that. I understand there's other siblings in the family, Gallo said; I don't who's in charge of what, at what time, unless you know. Marcus said okay, well, we can straighten that out and, as I say, we can address this, but it all sort of boils down to the farming use of the property. If you'd like to get that done this evening subject to getting the authorization from her to me, which we can provide, we can give you the history of the use of the property, the work that was currently being done that was subject to the order. And we have all that, if you would like to do it. Gallo said, okay, we have; we did an on-site on this. Marcus said okay, so you've seen it. Gallo said well yes; it was supposedly just graded so he could farm it; probably a 15 by 22 lot which he filled in that much. That kind of isn't what this; that kind of isn't what 22a-40 says, Gallo said; and actually the Cease & Desist Order should be applying to remove fill from the regulated area, which he had filled up. And the next thing was that you mentioned to Mr. Henry, how do we know that this soil isn't contaminated from where it came, Gallo said. There was a dry cleaner out there in that area, and we were there when Mr. Henry said this is all clean fill. And I showed him all the different colprovia; this isn't clean fill. Some of these issues really need to be addressed, Gallo said. Marcus said the only way you'll know whether the fill is clean or not is to do a lab analysis. Marcus said that's easy. Gallo said that's what we are going to ask for, but first before I do all of that, I would like to see ownership. Marcus said okay; that's fine. So we'll wait till we get your letter of authorization from Bernadine, Marcus said. Gallo said then you have an idea of what else we're looking for. Marcus said okay; so you want an analysis of the soil.

Gallagher said we'll do some borings; we'll get that analyzed. They don't care about the quality of the soil; we just want to know that it's not contaminated. Gallagher said that's what I mean; take the cores and test them. Marcus said you don't want a structural analysis; a chemical analysis, not a structural. Gallo said yes. Marcus said and a letter of authorization. Gallo said a letter of authorization I'd really like to see because, if she isn't going to authorize this, if one of the other siblings in the family does not want this, then we cannot do this. It may be totally unnecessary. Marcus said we'll do it; what else? Gallo said I think we have to; I think Dan has to establish where the wetlands are too, the regulated area; there's so much fill there, Attorney Marcus, that a; I mean there's really a lot of fill. Gallagher said we can have the soil scientist mark the wetlands. Marcus said, yeah, flag the wetlands. Gallo said any

idea how much fill you put out there? We asked Mike; I don't think he knows, Gallo said. If someone tells me a thousand yards, I'm going to say that's baloney, Gallo said. The cliff is like fifteen to twenty feet. Gallagher said I don't know. This farming regulation; we are going to have some different views on this farming thing. Marcus said, you know, it's interesting: you can; again, the farming exemption is pretty broad. Gallo said, yes, it is. It tells you what you can't do, Marcus said. You can't construct roadways and erect buildings not directly related to the farming operation. So, we had this issue in Redding a number of years ago, on a farm operation, Marcus continued. The question is could they dredge the pond when they needed a water source for a nursery. And there was a whole discussion about whether dredging the pond was a part of the farming operation. And, quite honestly, the outcome of that was the commission in Redding determined it was part of the farming operation. Gallo said, okay. Marcus said, so, and then I had an issue up in Brookfield years ago, whether the erection of the barn was that part of a farming operation, and again, you know, we went around and around and around. Gallo said we went all through that with the buildings and things. Gallo said Item 3 on the front page is in question. Marcus said it states that the wetlands in farming should be exempt; that's correct, that's correct ultimately. Gallo said they have the right to determine. Marcus said the proper way to do it is to bring to the commission the proposal which we're doing after the fact, because a lot of people don't understand. They think farming is exempt, Marcus said. Farms are exempt, but the commission has the right to be notified of the activity to determine that the farm is exempt, Marcus said. So I agree with you; the proper process, the procedure is if you are going to work on your farm in an area that would otherwise be regulated, you are supposed to go to the commission first. It's basically a declaratory ruling, Marcus said. Gallo said Item 6 is clear. Six through seven, what is not permitted, Gallo read, requires an application for a permit. Six point seven, relocation of watercourses with continual flow; filling of wetlands; reclamation of wetlands; filling of watercourses with continual flow. Unless this is all flagged, Gallo said, and we really can see where everything is, we are going to be at a standstill. But first I need to know who has the right to apply to this commission, Gallo said. Marcus said okay. Gallo asked anyone have anything you want to jump in on. I really think we need to know who owns this property; we went through this with the trails over there. We need to see something from you. But in the interim, we've got some other stuff you can do. You can stake out the regulated area, if you would. Marcus said so I've got four things on my list here, which we'll do, okay. Gallo said all right, Sir? Marcus said sounds good. We'll try to get these done. Gallo said there's no meeting at the end of this month because of the Jewish holiday. The next meeting will be October 10th. When you get it staked, let us know ahead of time so we can get out there. Do you want to say something, Dan, Gallo asked. Dan Baroody introduced himself. As far as the grading application, in the opinion of the Health Department, is premature, Baroody said. We don't have their farming exemption, they need to do a lot more work, so they should withdraw the application and the grading permit at this time. Get the EIC permit first and then apply for the grading permit. Gallo said okay. Gallagher said, when you said we don't have the farming exemption, we do have the work. Marcus said do you know that this is registered as a farm; is that an issue? Right now nothing is an issue, Gallo said, because right now he is applying for the permit. Baroody said to Marcus I am not going to get into this again, because we did this before. Marcus said that's the State registration. Gallo said okay, it's entered into the record. Marcus said we thought that we had to file this permit in terms of trying to comply with the order. But, you know, it's not. The EIC permit would come first, Baroody said. Marcus said I've never been accused of over-filing permits. You don't expect that you will act on that until the Commission makes its determination,

Marcus said. Lee said, Dan, before a grading permit, an EIC permit must be issued; is that what you're saying. Baroody replied yes. Marcus said an EIC determination, because what the question is do we need a permit or don't we need a permit. I think we are just playing with language, Marcus said. I understand what you are saying. Baroody said the permit application asks for permission to grade the land of the fouled area for future planning, and that's the crux of the Cease & Desist. Gallo said he might ask to fill some more. Marcus said so actually we have to finish the work. It's all the same project. You know what, Marcus said, the farm's not that big. Gallo added, yeah, we walked it. I know. Marcus said in one day probably. Gallo said a very short time. Gallo said we need a motion to table. Mills made a motion to **table** the Cease & Desist order until our next regularly scheduled meeting, October 10th. Roy seconded the motion. Gallo reiterated. Motion carried unanimously at 7:28 pm. Gallo said motion carries.

**OLD BUSINESS:**

**25 Miry Brook Road**

**Regulated Activity # 937**

**Voellman Nurseries**, Carl Sayers

Lot # F19011, IL-40 Zone.

Date of Receipt: 7/25/12.

Grading, Sediment, Erosion Control Plan.

First 65 Days: 9/28/12.

Artel Engineering Group, LLC

Second 65 Days: 12/2/12.

Proposed wetland restoration.

Copies to S. Danzer, P. Buzaid 7/31/12 and 8/7/12. Steve Danzer's report received 9/11/12. Gallo introduced this item. I believe everyone has something in their packet from Mr. Danzer. Dainius Virbickas, PE, of Artel Engineering Group, LLC, took the mic, on behalf of the applicant, Mr. Sayers. It's been some weeks since we have been here last. We did receive a comment letter from Dr. Danzer yesterday morning with respect to the proposed remediation. Virbickas said the site; we will go through and formally address the comments. At this time we haven't prepared any formal response to what was stated here. But we were wondering if perhaps we can get a little bit of guidance on some of the comments, or some clarification at least, Virbickas said. The first comment talking about the scope of the plan; it's basically a statement about what we are proposing to do. As we had stated before, we're proposing to remediate some of the wetlands that are on the site, basically, as we have shaded on the green portion of the plan; to remove fills in the wetland area, both to the north and south of the existing ditch. You have not really addressed comment number 1, Gallo said, and he read, "the area constitutes roughly half of the existing wetland fill area", which means you are not taking all of the fill out that you put in. You have to address that, Gallo said. Remove all the fill you put in; not half. Virbickas said okay. Let's go to two, Gallo said. It said it's remediation by order of the court, Gallo said; not compatible with the concept of a remediation plan, nor with the City of Danbury Wetland Regulations. Gallo reviewed Item three, and Virbickas said it's pretty self-explanatory, the property is pretty flat. Right now the parcel is bisected by this drainage ditch. My client wishes to place a pipe there to allow access to either side. Gallo said, Item number two: I'm not so sure that shouldn't be a second application. It is not on the plan. Item number 3 is pretty self-explanatory, Virbickas said, and we intend to increase the herbaceous layer. The reason we have so few contours on the property is that it is pretty flat, Virbickas said. Gallo referred to item number 5, Construction Debris on Site. That's not helping the remediation plan at all. Gallo said I think that I would rather ask that you come back with a

formal response to this, and if you need guidance I would recommend you call Mr. Baroody's office. Virbickas replied, very well. Virbickas reviewed number one. Gallo said all the fill you put in here will need to be moved. Let the record show that Derek Roy is here, please, Gallo said. Items 4 and 5 are self-explanatory, Gallo said. I don't know how we can decide, Gallo continued, how we can discuss that until you remove all the fill you put in there. We're going to need a formal response. Virbickas said, sure. Gallo said give them to staff's office and they can distribute them. Mr. Baroody would be happy to help you. Virbickas said I also have some documents that my client wanted me to submit to the commission. Virbickas said if there are any questions, I'd be happy to answer. Gallo said not at this time. I think that this pretty much tells us everything. Gallo continued at this point I need a motion to table. Mills made a motion to **table**. Esposito seconded the motion. Motion carried unanimously at 7:13 pm. Gallo said thank you.

**Michelle McDonough**

**Regulated Activity # 938**

**50 Forty Acre Mountain Road**

Lot # K03006, RA-20 Zone.

Date of Receipt: 8/8/12

Residential additions, garage, deck, well.

First 65 Days: 10/12/12.

Artel Engineering Group, LLC.

Second 65 Days: 12/16/12. CLA comments rec'd. 8/20/12. Staking done. Site visit 8/21/12. House plans rec'd. 8/23/12. Artel requests to table 9/12/12. Gallo said they are not here, right, Dan? Baroody replied they have asked us to table. Rose made a motion to **table**. Mills seconded the motion. Motion carried unanimously.

**193-207 Great Plain Road**

**Regulated Activity # 723 RRR**

**Savannah Hills Subdivision**

J. Cordeiro, RA-80 Zone.

Date of Receipt: 8/22/12.

Michael J. Mazzucco, PE

First 65 Days: 10/26/12.

Second 65 Days: 12/30/12. Gallo introduced this item and announced that this is not a public hearing; there will be no public speaking. Marcus asked is Mike coming tonight to Mr. Cordeiro. Mills made a motion to **table**. Roy and Rose seconded the motion. Motion carried unanimously. I'm sorry if you are here for Savannah Hills, Gallo said to the audience.

**NEW BUSINESS:** NA

**APPLICATIONS FOR ADMINISTRATIVE APPROVAL:** NA

**ADMINISTRATIVE STAFF ACTIONS:** NA

**VIOLATIONS:** NA

**ACCEPTANCE OF MINUTES:** Motion to approve the 8/22/12 meeting minutes as presented by Rose. Second by Mills. Motion carried unanimously.

**CORRESPONDENCE:** CT DEEP Advisory to CT Municipal Inland Wetland Agencies, dated 8/29/12, amending effective time periods for IWWA approval (Public Act No. 12-151). If you read the correspondence, Gallo said, apparently they are pushing for ten years. Roy added we can also restrict to seasonality.

**EIC ADMINISTRATION & FUTURE AGENDA ITEMS:** NA

**ADJOURNMENT:** Motion to adjourn by Mills. Second by Roy. Motion carried unanimously at 7:28 pm.

The next regular meeting of the DEIC is scheduled for October 10, 2012.